

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CITY OF SEATTLE,

Plaintiff,

v.

MONSANTO COMPANY, *et al.*,

Defendants.

Case No. C16-107-RAJ-MLP

ORDER

This matter comes before the Court on the Honorable Richard A. Jones's reference of: (1) two issues raised in Defendants Monsanto Company, Solutia Inc., and Pharmacia Corporation's Motion for Summary Judgment ("Defendants' Motion") (dkt. # 326); and (2) Plaintiff City of Seattle's "Motion to Strike Defendants' Amendments to Their Affirmative Defenses 10, 15, 18, 21, and 82" ("Plaintiff's Motion") (dkt. # 343). Based on Judge Jones's reference of the parties' Motions to this Court, the Court hereby ORDERS the following:

(1) Oral argument is set for **November 16, 2022, at 1:00 p.m.** on both Defendants' Motion (dkt. # 326) and Plaintiff's Motion (dkt. # 343). The parties are each authorized to submit 20-pages of supplemental briefing, by close of business on **November 10, 2022**, on the issues identified in Judge Jones's reference of Defendants' Motion, and as raised in Plaintiff's Motion, with specific consideration of:

1 (a) the effect of the State of Washington’s June 2020 settlement agreement with  
2 Defendants in light of the Honorable Robert S. Lasnik’s prior ruling that  
3 Plaintiff’s public nuisance claim was brought for the benefit of the State— based  
4 on authority delegated from “the [State’s] duty to hold all navigable waters within  
the state in trust for the public”— and determination that Plaintiff’s efforts to  
remediate its waterways of pollution is an act “for the public good” undertaken in  
its sovereign capacity (*see* dkt. # 60 at 8-9)

5 (b) whether this Court can revisit Judge Lasnik’s prior rulings or if this Court is  
6 bound to those determinations in light of law of the case doctrine and the  
previously addressed statute of limitations issue concerning Plaintiff’s public  
nuisance claim;

7  
8 (c) under Washington law, whether a municipality functions as an “agency” of the  
State, and whether the State’s settlement agreement otherwise contemplated the  
release of claims by all of the State’s municipalities as “agencies” of the State;

9  
10 (d) the distinction between the City of Seattle’s public nuisance action against  
Defendants and the named class-action plaintiffs City of Tacoma and City of  
11 Spokane in Defendants’ pending class-action settlement agreement (dkt. # 344-5),  
in regard to whether the State’s settlement agreement would otherwise release the  
City of Tacoma and City of Spokane’s claims absent the pending class-action  
12 settlement;

13 (e) the effect of the State’s settlement agreement on all of the Washington  
municipalities identified as initial settlement class members in Defendants’  
14 pending class-action settlement agreement (*see* dkt. # 344-5, Ex. A) and whether  
the State’s settlement agreement would also release those municipalities’ claims  
15 absent the pending class-action settlement; and

16 (f) whether the acquiescence exception, and/or waiver, applies to Defendants’ *res*  
17 *judicata* defense given Defendants’ litigation of the City of Seattle and the State  
of Washington’s claims in dual proceedings and separate forums.

18 (2) Based on Judge Jones’s reference of the issues contained in Defendants’ Motion,  
19 and reference of Plaintiff’s Motion, the Clerk is directed to RE-NOTE the parties’ pending  
20 *Daubert* Motions and Motions to Strike (dkt. ## 274, 276, 278, 280, 282, 284, 286, 288, 290,  
21 292, 297, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320) for the Court’s  
22 consideration on **November 25, 2022**.

23 The Clerk is directed to send a copy of this Order to the parties and to Judge Jones.

1 Dated this 20th day of October, 2022.

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3 MICHELLE L. PETERSON  
4 United States Magistrate Judge